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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 14, Original

THE UNITED STATES OF AMERICA, PLAINTIFF,

vs.

THE STATE OF UTAH, DEFENDANT.

ANSWER OF THE STATE OF UTAH.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. —, Original

THE UNITED STATES OF AMERICA, PLAINTIFF,

vs.

THE STATE OF UTAH, DEFENDANT.

DEFENDANT'S ANSWER.

Comes now the defendant above named, to wit, the State of Utah, and answering the bill of complaint heretofore filed in the above-entitled Court and cause, alleges, denies and admits as follows:

1. Admits all of the allegations contained in subdivision numbered I of said complaint.

2. Answering subdivision numbered II of said complaint, defendant admits the plaintiff now is and at all times since February 2, 1848, has been seized in fee of a large portion of the land riparian to and on each side of those portions of the Colorado River, San

Juan River and Green River described in said subdivision numbered II of said bill of complaint, but in this connection alleges that it has not sufficient knowledge or information upon which to base an allegation or admission with reference to the precise amount of riparian land thus owned by said plaintiff. Defendant denies that plaintiff is now or at any time since defendant was admitted into the Union and became a State of the United States of America has been the owner of or seized in fee of the bed of that portion of the Colorado River described or referred to in said subdivision numbered II of said complaint, or of the bed of that portion of the San Juan River described or referred to in said subdivision numbered II of said complaint, or of the bed of that portion of the Green River described or referred to in said subdivision numbered II of said complaint, and denies that said plaintiff is now or at any time since defendant was admitted into the Union and became a State of the United States of America has been the owner or seized in fee of all or any part of the bed of said Colorado River, or of the bed of said San Juan River, or of the bed of said Green River located within the boundaries of said State of Utah.

3. Admits all of the allegations contained in subdivision numbered III of said complaint.

4. Defendant admits all of the allegations contained in paragraphs lettered (*a*), (*b*), (*c*), (*d*), and (*e*), respectively in subdivision numbered IV of said complaint.

Answering paragraph lettered (*f*) of said subdivision IV of said complaint, defendant admits that divers areas in the region traversed by said streams throughout their course in the State of Utah are now and from time immemorial have been arid, barren, desolate, broken and high above said streams, and that certain of said areas have not produced and do not produce commodities which are transported by water; but denies that the region traversed by each or any of said streams throughout their courses in the State of Utah is generally of such character as to preclude access of man or beast to said streams or either of them, or as to make said regions uninhabitable, or as to make the production of commodities thereon impossible or impracticable or as to be not susceptible of sustaining a population served by water transportation. In this connection defendant alleges that vast areas along and in the vicinity of the banks of said streams and each of them throughout their course in the State of Utah, and particularly along and in the vicinity of the banks of those portions of said streams described and referred to in said subdivision numbered II of said complaint, are now and at all times herein mentioned have been susceptible of irrigation and the production of crops and commodities and of other uses by man, and that said areas have vast present and potential value. Defendant further alleges that the character or condition of the region traversed by each of said streams along the course of said streams in no manner affects or destroys their navigability within said State of Utah.

Answering paragraph lettered (*g*) of said subdivision numbered IV of said complaint, defendant denies that throughout the reaches described in subdivision numbered II of said complaint said streams, or either of them, are or have been tortuous, laden with great quantities of sand or silt, or that the flow thereof is rapid or extremely variable in volume or depth or that the channels thereof are profusely beset with fixed or shifting boulders or with rapids or cataracts. Defendant admits that at certain widely separated points along said streams and each of them their course is tortuous, boulders are present and rapids exist, and that at times sand and silt are there present in considerable quantities, and that at points along the banks and in the beds of said streams there occur bars of gravel and sandbeds which from time to time shift in some degree as a result of the current of the stream, the gradient thereof and the action of floods, but in this connection defendant denies that said or any characteristic, quality or condition of said streams, or either of them, destroys the navigability of said streams or either of them within said State of Utah, and alleges that said streams and each of them throughout the regions described in said subdivision numbered II of said complaint and elsewhere within the boundaries of the said State of Utah are now and at all times herein mentioned have been navigable in fact and are navigable waters within the meaning of the laws of the United States.

Answering paragraph lettered (*h*) of said subdivision numbered IV of said complaint, defendant admits that at times said San Juan River is laden with mat-

ter in suspension, and that at times floods occur, accompanied by some change in the position of the main channel of the river at certain points and by some erosion of the banks of the stream, but denies that vast masses of sand are carried forward in series of sand waves or that floods in San Juan Canyon are numerous or disastrous, and denies that said or any characteristic, condition or behavior of said river destroys its navigability within said State of Utah.

5. Answering paragraph lettered (*a*) of subdivision numbered V of said complaint, defendant denies that said Colorado, Green and San Juan Rivers, or either of them, throughout their entire lengths within the State of Utah, are not now or have not at any time herein or in said complaint mentioned been navigable in fact, and denies that those portions of said streams or either of them located within said State of Utah are not now or at any time herein or in said complaint mentioned have not been navigable waters within the meaning of the laws of the United States, and denies that trade or travel cannot move over those portions of said rivers within said State in their natural and ordinary conditions according to the customary methods of trade and travel over water, and denies that those portions of said rivers, or either of them, located within said State of Utah have not been used or that they, or either of them, are not susceptible of being used in their natural and ordinary conditions as permanent highways or channels for useful commerce within said State of Utah.

Answering paragraph lettered (*b*) of said subdivision numbered V of said complaint, defendant admits all of the allegations thereof.

Answering paragraph lettered (*c*) of said subdivision numbered V of said complaint, defendant admits all of the allegations thereof, but alleges in connection therewith that the parts of said rivers within the State of Utah have been and now are being used as a highway for intrastate commerce.

Answering paragraph lettered (*d*) of said subdivision numbered V of said complaint, defendant admits all of the allegations thereof.

6. Admits that deposits of mineral, to-wit, oil and gas, have been discovered within certain portions of the riparian lands and extending to and under the river beds described in subdivision numbered II of said complaint, but denies that said river beds, or either of them, or that any mineral, oil or gas located within or below either or any of said river beds, is now or at any time since Utah became a state as aforesaid has been owned by plaintiff.

7. Answering paragraph lettered (*a*) of subdivision numbered VII of said complaint, defendant admits that plaintiff executed and delivered numerous prospecting permits covering ground located along said streams, and that under the terms of said permits plaintiff purported to grant to the permittees therein named the exclusive right and privilege of prospecting for petroleum, oil and gas minerals, but denies that under the terms of said permits said permittees were granted the right or privilege of prospecting for

petroleum, oil or gas minerals or otherwise in or under said river beds or either of them, and in this connection alleges that under and pursuant to the terms of said permits executed and delivered as aforesaid it was expressly provided that valid rights existing at the date thereof should not be affected thereby.

Answering paragraph lettered (*b*) of said subdivision numbered VII of said complaint, defendant admits that said permittees have entered upon and are now in possession of and engaged in drilling and development work at various points on lands covered by their said permits, but denies that said permittees or any of them are now or at any time herein mentioned have been in possession of or engaged in drilling or development work upon said or any portion of said river beds or either of them, and alleges that if any such possession of said river beds has been assumed, or drilling or development work engaged in, the same has been unlawful.

8. Answering subdivision numbered VIII of said complaint, defendant admits that it claims an estate, right, title and interest in and to said river beds, and admits that it publicly asserts title thereto, and that said streams and each of them always have been and now are navigable within said State of Utah, and that title to the beds thereof located within said State of Utah vested in it when it became a state as aforesaid, and that such title remains so vested. Defendant denies that plaintiff has any right, title or interest whatsoever in or to said river beds, or either of them, or in or to any portion thereof.

9. Answering subdivision numbered IX of said complaint, defendant denies that it is without proprietary or other interest or title in or to said river beds, and denies that it is without power or authority to grant, convey or confer by lease or otherwise any proprietary or other interest or title therein, and alleges that it is the owner in fee simple of all of said river beds located within its boundaries and has full power and authority to grant, convey or confer by lease or otherwise such right, title or interest therein as it may deem desirable.

10. Admits all the allegations contained in subdivision numbered X of said complaint.

11. Answering subdivision numbered XI of said complaint, defendant denies that plaintiff will suffer great or irreparable or other damage or injury if denied the relief by it prayed for, and in this connection alleges that plaintiff has no right, title or interest whatsoever in or to said river beds or either or any of them or in or to any portion thereof.

12. Further answering said complaint, defendant alleges that pursuant to the Act of Congress approved July 16, 1894, entitled "An Act to enable the people of Utah to form a Constitution and State Government, and to be admitted into the Union on an equal footing with the Original States," defendant the State of Utah, on or about January 4, 1896, was admitted into the Union and became a state of the United States of America, on an equal footing with the original states; and pursuant to said Act of Congress and to the Constitution of the United States defendant, upon its ad-

mission as aforesaid into the Union, became vested with the title to all portions of the beds of the Colorado, San Juan and Green Rivers, respectively, located within the boundaries of the State of Utah, including the beds of those portions of said rivers described or referred to in subdivision numbered II of said complaint, and defendant alleges that at all times since it became a state as aforesaid it has been and now is the owner in fee simple of said beds of said rivers and of each and every portion of said beds located as aforesaid within its boundaries. That from time immemorial said Colorado River, Green River, San Juan River and each of them have been and now are, throughout their entire length within said State of Utah, and particularly throughout that portion thereof described or referred to in said subdivision numbered II of said complaint, navigable rivers, well adapted for the carrying of freight and passengers thereover in boats and other water craft; that at and prior to the time defendant became a state as aforesaid, said rivers and each of them were not only susceptible of navigation but actually navigated along those portions thereof described or referred to in said subdivision numbered II of said complaint and elsewhere within the State of Utah, and following said date when defendant became a state as aforesaid and for a long time prior to the commencement of this action said rivers and each of them have been and now are frequently and regularly navigated by boats carrying freight and passengers along those portions thereof described or referred to in said subdivision numbered II of said complaint.

WHEREFORE, having fully answered said complaint, defendant prays that plaintiff take nothing thereunder, that said complaint be dismissed upon the merits and that defendant have such other and further relief as may to this Honorable Court seem fit and proper.

HARVEY H. CLUFF,
Attorney General of the State of Utah.
VAN COTT, RITER & FARNSWORTH,
Attorneys for Defendant.

Service of foregoing answer is hereby acknowledged this 10th day of October, 1928.

JOHN G. SARGENT,
Attorney General;
WILLIAM D. MITCHELL,
Solicitor General,
Attorneys for Plaintiff.

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FILED
FEB 16
CHARLES ELMORE

No. 14, Original

In the Supreme Court of the United States

OCTOBER TERM, 1928

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF UTAH, DEFENDANT

MOTION BY THE UNITED STATES FOR THE APPOINTMENT OF A SPECIAL MASTER

U.S. GOVERNMENT PRINTING OFFICE: 1929

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 15, ORIGINAL

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF UTAH, DEFENDANT

PROOF OF MAILING PAPERS

DISTRICT OF COLUMBIA, *ss:*

The undersigned, being first duly sworn, deposes and says: On February 16, 1929, at Washington, D. C., I deposited in the United States post office in sealed envelopes, one addressed "Hon. George H. Dern, Governor of the State of Utah, Salt Lake City, Utah," and the other "Hon. George P. Parker, Attorney General of the State of Utah, Salt Lake City, Utah," true copies of the papers entitled in this case styled "Motion by the United States for the appointment of a Special Master."

WM. J. HUGHES.

Sworn to before me this 16th day of February, 1929.

[SEAL] W. MARVIN SMITH,
Notary Public, D. C.

My commission expires May 23, 1929.